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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-third session

SUMMARY RECORD OF THE 22nd MEETING

Held at the Palais des Nations, Geneva,
on Wednesday, 21 August 1991, at 10 a.m.

Chairman: Mr. JOINET

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The meeting was called to order at 10.20 a.m.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES (agenda item 10)

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY

1. Mr. CHERNICHENKO said that he understood that the recent events in the Soviet Union would be taken up by the Sub-Commission at the present meeting.

2. There were grounds for alarm at what was clearly a very serious political situation in the Soviet Union. How could the Sub-Commission react to those events while remaining on purely humanitarian grounds? While sympathizing with the view of some members that there was a need to react quickly, he wished to stress that the situation was in a state of constant flux. A long discussion in the Sub-Commission would inevitably become politicized. He therefore suggested that the Special Rapporteur on the question of human rights and states of emergency should be requested to take up the matter, as it fell within his terms of reference.

3. Mr. EIDE endorsed Mr. Chernichenko's proposal to ask Mr. Despouy, the Special Rapporteur on the question of human rights and states of emergency, to look into the events in the Soviet Union, where a series of illegal actions had been carried out within the last few days under cover of a state of emergency. Mr. Gorbachev, the current President of the USSR, had been prevented from exercising his constitutional power through illegal use of physical power by elements primarily relying on the armed forces. A group of persons styling themselves the "State Committee for the State of Emergency in the USSR" was seeking to exercise power. A struggle was being waged to reimpose dictatorship by exploiting the notion of state of emergency.

4. Since the Sub-Commission was the only human rights body at present in session, it had a responsibility to deal unequivocally with the situation in the USSR.

5. The USSR was a party to the International Covenant on Civil and Political Rights and had acceded to its first Optional Protocol. Under article 4 of the Covenant, States parties might take measures derogating from some of their obligations under the Convention. But who acted on behalf of the State party? Clearly it was the Government, in accordance with its own constitutional provisions.

6. In 1990 the Supreme Soviet of the USSR had adopted a law on the declaration of a state of emergency. It was quite clear that the action taken by the persons comprising the so-called "State Committee for the State of Emergency in the USSR" had violated that law and the Constitution. Those actions were therefore unconstitutional and null and void.

7. It was also clear - though that was a secondary consideration - that the emergency declared did not meet the requirements of article 4 of the Convention. There had been no public emergency endangering the life of the nation. The only threat had been to the power and influence of the group of persons forming the "State Committee for the State of Emergency in the USSR".

But it would be a clear violation of several provisions of the International Bill of Human Rights for a disaffected group of politicians to overturn the democratically elected authorities and impose a state of emergency in order not to save the nation as required by article 4 but to consolidate their own rule. They might in due course threaten the life of the nation but they were themselves now the cause of that threat, which would disappear if they desisted from their violent behaviour.

8. Since the state of emergency was invalid, subsequent acts were also invalid. Several gross violations of human rights had already occurred, including the imposition of censorship, the use or threat of violence to confine the President of the USSR and the President of the Russian Republic, and the use of armed force against unarmed civilians.

9. A so-called arrest, carried out by an unconstitutional group of persons, was an instance of illegal use of physical violence. When directed against the constitutional authorities of the State, it was a serious crime under any legislation.

10. Mrs. DAES said that she shared the anguish of the Soviet people. Her comments were motivated by humanitarian and not by political considerations.

11. As Mr. Eide had pointed out, the Soviet Union was a party to international human rights instruments. The state of emergency violated article 4 of the International Covenant on Civil and Political Rights. Every one of the recommendations in the Sub-Commission's studies of states of emergency had been violated by the State Committee for the State of Emergency in the USSR that was another reason for the Sub-Commission to take action.

12. She suggested that an appeal should be sent by the Sub-Commission through the Chairman of the Commission on Human Rights to the State Committee for the State of Emergency in the USSR. The text should be drafted as soon as possible by a working group of members, including Mr. Chernichenko, and she hoped that it would be adopted by consensus.

13. The matter should be kept under consideration by the Sub-Commission until constitutional order was re-established in the Soviet Union.

14. Mr. CHERNICHENKO wondered whether the Sub-Commission should address an appeal to the State Committee for the State of Emergency in the USSR if, as Mr. Eide had argued, it was an unconstitutional body.

15. Mrs. DAES pointed out that the Sub-Commission's appeal had to be addressed to someone. That did not in any way imply recognition of that body.

16. Mr. TREAT endorsed the concern expressed by previous speakers at the events in the Soviet Union. However, in view of the Sub-Commission's heavy agenda, it should not hold a long discussion on the matter.

17. He had great respect for the efforts made in the Soviet Union to set up a democratic State. The Sub-Commission ought make clear its support and its belief that there should be no violations of human rights in the present situation.

18. He agreed with Mr. Eide that the declaration of the state of emergency was illegal, since it required a two thirds vote of the Supreme Soviet, which had not been taken.

19. He had previously been considering the possibility of tabling a draft resolution on the Baltic States which had never legally become part of the Soviet Union, but had decided not to do so since he had been given to understand that President Gorbachev was conducting negotiations on the matter. However, in view of recent events he had now tabled that resolution, for clearly the Baltic States had been singled out for particularly repressive measures.

20. Mr. ILKAHANAF said that he would express his views from a purely humanitarian standpoint.

21. The Sub-Commission was perfectly entitled to discuss the imposition of the state of emergency in the USSR and to censure it if necessary. International humanitarian law did not apply only to developing countries.

22. He suggested that the Sub-Commission should follow previous practice and appeal to those responsible, as it had done in the case of human rights violations by the Government of South Africa.

23. Mr. van BOVEN said that since the Sub-Commission was in session it could not ignore the events in the Soviet Union. However, he agreed with Mr. Chernichenko that the Sub-Commission should not act hastily. He therefore proposed that it should act in two stages: Mr. Despouy, the Special Rapporteur on the question of human rights and states of emergency should send a cable or note to the Soviet authorities asking for information and explanations. If he had not received an answer, or a satisfactory one, within forty-eight hours, the Sub-Commission should then take action on the lines already suggested, through the Chairman of the Commission on Human Rights.

24. Mrs. BAUTISTA endorsed the expressions of sympathy for the people of the USSR. The Sub-Commission could not ignore the situation there. She agreed that the Special Rapporteur should monitor the situation and ask for an explanation from the authorities. The Sub-Commission should also express its concern that there should be no violations of the human rights of the Soviet people. In that connection it had no need to worry about legality or constitutionality: it was its duty to issue such an appeal, through the Commission on Human Rights.

25. Mrs. ATTAH said that the events taking place in the USSR were of great concern to everyone everywhere. In any event, the Sub-Commission must concern itself only with the human rights aspects of the situation and avoid any action based on political considerations. She was disturbed that nothing had been said about the situation in Yugoslavia, which also ought to be taken up.

26. The CHAIRMAN said that it was his understanding that a draft resolution was to be submitted on Yugoslavia.

27. Mr. KHALIL agreed that the approach taken by the Sub-Commission must be purely humanitarian. All members of the Sub-Commission had strong feelings about what was happening in the USSR, but as a body of experts the Sub-Commission should not be seen as interfering in the internal affairs of a State.

28. Mr. ALFONSO MARTINEZ said that he shared the concern expressed by other members regarding the situation in the USSR. Any important event in such a large country was bound to have extensive consequences. He wished to draw attention to the message sent by the new authorities to all Heads of State and to the Secretary-General of the United Nations indicating that the measures were only temporary, that they did not affect the USSR's existing international obligations, and that the Government was interested in continuing relations with all States on a basis of equality and non-interference. There was a noticeable difference in emphasis in the reporting of the situation in the Western and Soviet news media: the Western media suggested a chaotic situation, while the Soviet media indicated that the situation was normal.

29. Mr. Chernichenko had rightly stressed the fluidity of the situation and had rightly called for serenity and requested that the debate in the Sub-Commission should not be politicized. It was difficult to see how any action taken by the Sub-Commission could make the situation in the USSR less complex. Some members had already made judgements concerning the legitimacy of the state of emergency. He had just read the text of the law governing states of emergency in the USSR, and he could not judge. If the Sub-Commission were to make a judgement on that matter, it would be exceeding its mandate and might even complicate the situation even further. To assess whether a reply was or was not "satisfactory", as suggested by Mr. van Boven, would lead to a dead end. The Soviet people should be left to solve the problem themselves.

30. Mr. SACHAR said that, if the situation in the USSR was changing, it was changing for the worse. The President of the Russian Republic was under siege and had called for resistance. Mr. Gorbachev was said to have been removed from office on medical grounds. It would therefore be appropriate for the Sub-Commission to request that he be examined by an international panel of doctors, since it could not just accept the word of the State Committee for the State of Emergency in the USSR. India had experienced a state of emergency, and in the confusion that had followed the support of the international community had been of great help. He agreed that the Chairman should draft a document expressing the Sub-Commission's concern and demanding a medical examination of Mr. Gorbachev and that he be allowed to appear on television. Mr. Gorbachev had changed the course of world history and it would be a great shame if the Sub-Commission were to remain silent about his fate.

31. Mr. SABOIA said that he shared the concern expressed by other members regarding events in the USSR. He agreed with Mr. Eide that the conditions required by the International Covenant on Civil and Political Rights for the proclamation of a state of emergency had not been met. Having listened to Mr. Chernichenko's remarks about the complexity of the events in the USSR, he still felt that the Sub-Commission could concern itself with the situation,

but without making a detailed legal assessment or requesting that a reply be sent within a stipulated period of time. The Sub-Commission should make a humanitarian appeal against violence and call for a dialogue and for moderation.

32. Mr. RIVAS POSADA said that he, too, was saddened by the events taking place. The Sub-Commission ought to make some kind of announcement, since the question of human rights and states of emergency was an important item in its work. Any appeal to be made by the Sub-Commission to the Soviet authorities should not only concentrate on the humanitarian aspect but also reflect its concern about the events that had taken place and call for action to prevent future violations of human rights and fundamental freedoms. In any case, to address an appeal to the authorities presently in power would not entail their legitimization.

33. Mrs. KSENTINI said that the Sub-Commission must avoid haste, politicization or any statement to the effect that states of emergency were automatically violations of human rights. She agreed with Mr. Chernichenko that the situation should be examined by the Special Rapporteur. Serenity and objectivity were needed, free of any partisan spirit.

34. Mr. TURK said that everyone present was aware that the recent events in the USSR were very serious and had many implications for human rights. The Sub-Commission should not minimize the dangers involved. Something more than a formalistic approach was required.

35. First, it had to be ascertained whether the state of emergency declared in the USSR went beyond what was permitted under article 4 of the International Covenant on Civil and Political Rights. Mr. Despouy, the Special Rapporteur, would look into that matter. Second, there was a danger that further violations of human rights might be committed as a result of the use of military force against civilians. The Sub-Commission must reflect on that. Third, there was the question of violations of the right to self-determination. That might not be a priority issue at the moment, but it was no coincidence that the coup d'état had taken place the day before the new Treaty of Union was due to be signed.

36. A few questions that merited attention for possible action included the state of emergency and the need for the army to return to barracks and for the establishment of a peaceful dialogue. It could, of course, be objected that those were political matters essentially within the jurisdiction of States. The Sub-Commission must therefore be careful not to go beyond its mandate and politicize the issue; it could, however, pay particular attention to the question of how to create the kind of political context that was necessary for the observance of human rights. Humanitarian concerns had to be taken up, but it was more difficult to deal with them in a political context. He supported Mr. van Boven's proposal for a two-stage approach and agreed with Mr. Chernichenko that the situation was changing rapidly. The Sub-Commission should reflect on the situation, request Mr. Despouy to report on the situation with regard to the state of emergency, and request the officers to ascertain what other elements could be taken into account when a decision on the action to be taken by the Sub-Commission was adopted.

37. Mrs. Attah had rightly drawn attention to the very serious situation in Yugoslavia, where violations of human rights were taking place. He had already made a statement on that subject in the debate on agenda item 6. There was a need for the Sub-Commission, as a body with considerable moral authority, to take action, but any action must take account of realities.

38. Mr. TIAN JIN said that more objective information was needed on the events that were taking place in the USSR. Mr. Chernichenko's remarks had to be taken into account. The state of emergency was an internal affair of the USSR, whose people could overcome the difficulties by themselves.

39. Mrs. WARZAZI agreed with those who felt that the Sub-Commission could not engage in political criticism of the proclamation of a state of emergency in the Soviet Union. There were some emergency situations which, contrary to what might be supposed, had as their aim the protection of the population against violence, extremism and terrorism. The Sub-Commission could intervene only on a strictly humanitarian level by making an appeal that human rights and the rights of populations should not be violated. Political bodies and heads of States could and should take measures against the authors of the events in the Soviet Union, while closely examining their consciences to see how far they themselves might have had an influence on those events. She endorsed the proposal by Mr. van Boven to ask the Special Rapporteur to study the situation and send a message to the Soviet authorities asking for explanations. However, the Sub-Commission should not wait 48 hours for a reply, as Mr. van Boven had asked; it should ask the Secretary-General to transmit its strictly humanitarian concern. Addressing the Secretary-General directly would carry more weight than transmitting its request through the Chairman of the Commission on Human Rights.

40. Mr. MAXIM cautioned the Sub-Commission against allowing emotion to dominate its manner of proceeding. He did not agree with Mrs. Warzazi in regard to Mr. van Boven's proposal. Having himself experienced revolutionary events in Romania he did not believe that anyone in Moscow could give clear-cut answers in 48 hours to specific questions. As Mr. Chernichenko had said, the Sub-Commission should express its concern at what was happening in the Soviet Union, follow events closely until the end of its current session and reflect further, as Mr. Türk had proposed, on how to react. He agreed with Mr. Saboia, Mr. Rivas Posada and Mrs. Ksentini that for the time being the Sub-Commission should go no further.

41. Mr. HELLER said that he would confine himself to the possibilities for the Sub-Commission's action within its terms of reference. He endorsed the proposal for a moral expression of concern for human rights by the Sub-Commission to the legal authorities in the Soviet Union: an appeal not to use force but to find a peaceful solution to what was a political crisis. As Mr. Maxim had said, an answer could not be obtained in 48 hours. In any case the Special Rapporteur could analyse the relevant documents and make a report to the Sub-Commission, whose conclusions should be transmitted to the Commission on Human Rights and not to the Secretary-General.

42. Mr. GUISSE agreed with Mrs. Attah, Mrs. Ksentini and Mrs. Warzazi that at present information was lacking on the situation in the Soviet Union; the information that was available was insufficient for it to take specific action. Restraint was needed, for the Sub-Commission's decision would be a precedent in its history and had to fit its terms of reference.

43. The CHAIRMAN observed that the present case did not constitute a precedent; the Sub-Commission had taken positions on several cases, including that of Chile.

44. Mr. ILKAHANAF did not agree with what had been said about interfering in internal affairs; all situations dealt with by the Sub-Commission related to countries, and the Sub-Commission intervened on humanitarian, not ideological grounds. As the Chairmen had said, there had been precedents: in 1989 a similar situation had arisen in Burundi. An appeal had been made to Burundi and an answer had been received. The Sub-Commission should not wait and see but should base its action on what had already happened. An appeal such as had been made in Burundi would be the best course, as Mrs. Daes and Mr. Eide had suggested.

45. Mr. KHALIL, clarifying his previous statement, said that he had not meant that action taken by the Sub-Commission was necessarily interference, but that it should not be seen as such. The Sub-Commission could not remain inactive or indifferent; it should do something positive and within its terms of reference. Whatever it could and should do was purely on humanitarian grounds or better, purely on grounds of human rights.

46. Mr. AL-KHASAWNEH stressed the importance of a consensus if the action of the Sub-Commission was to have any effect. It should keep clear of details and the temptation to prescribe what should be done. He supported the proposal for an appeal asking for human rights to be respected: there was no reason to be more specific than that.

47. Mr. MERRILLS said that it was not possible to argue, in 1991, that the way in which a State treated its own citizens was a matter of domestic jurisdiction and not within the jurisdiction of human rights bodies. The Universal Declaration, the Covenants and 50 years of United Nations human rights practice seemed ample to bring within the remit of human rights bodies matters such as were being currently witnessed in the Soviet Union.

48. With regard to the relation between the information at the disposal of the Sub-Commission and the action it should take, it had to be asked just how much information was needed before action was justified. The Sub-Commission's information on events in the Soviet Union was about a changing situation and was naturally incomplete, but it could not be said that there was not enough information to act. Those who put forward that argument might perhaps never have enough information to satisfy them that action was appropriate. Of course, any action the Sub-Commission took should be related to the information at its disposal and not to speculation about the future.

49. With regard to what was appropriate or inappropriate for the Sub-Commission to do, he felt that it would not be useful to take any kind of decision on the question of the legality of the state of emergency.

That question did raise an important human rights issue, but its review required a more extended kind of consideration than could be given in a brief debate. Any action the Sub-Commission took should be related to the current consequences of the state of emergency for human rights rather than to issues of legality or other matters more difficult to consider.

50. The CHAIRMAN observed that the Commission had taken a position on the question by including in the mandate of the newly established working group on arbitrary detention consideration of the question of the domestic legality of detention measures. There had thus been a new development in the United Nations system.

51. Mr. DESPOUY, Special Rapporteur, observed that two possible alternatives had been mentioned: an appeal by the Sub-Commission and a request for further information by the Special Rapporteur.

52. With regard to the second alternative, he recalled that for some years he had been required to prepare a list of States that had proclaimed states of emergency and to scrutinize the legality of the measures taken and their impact on human rights. Before drawing up his final report he collected the points of view of Governments and information from all reliable sources.

53. On the previous day he had sent a letter to the Soviet authorities, using the conventional wording and asking for specific information linked to the state of emergency, its legal basis, its impact on human rights, its time frame and the geographical area it covered. His letter had differed from previous texts only in asking for the information within the week. He would ask the Secretariat to distribute the text of that letter.

54. Mrs. DAES pointed out that on the previous day the Secretary-General of the United Nations had made an appeal to the Soviet authorities. The procedure which she had proposed was that if the Sub-Commission decided to address an appeal to the Soviet authorities it should do so through its parent body, the Commission, as it usually did.

55. Mrs. WARZAZI said that a good deal of time might have been saved if the Special Rapporteur had taken the floor earlier.

56. Mrs. BAUTISTA recognized that over two hours had been spent discussing the question of events in the Soviet Union; it was now in order for the Sub-Commission to decide on what action to take.

57. Mr. DESPOUY, replying to Mrs. Warzazi, said he had pointed out that sending a note to a country that declared a state of emergency was a routine procedure. During the debate, the desire had been expressed for such a note to be sent and that was why he had made his statement. He had also explained that the Special Rapporteur's procedure was based on collecting information from all sides, without which it would be difficult to give any assessment.

58. Mrs. WARZAZI asked Mr. van Boven what would now become of his proposal.

59. Mr. van BOVEN said that it was certainly within the mandate of the Special Rapporteur to send a note on his own initiative to the State concerned. He would not press his own proposal until he had been able to study the text of the note sent by Mr. Despouy.

60. Mr. ALFONSO MARTINEZ expressed the view that, while a number of countries in the West had been prepared to cede part of their sovereignty to supranational organizations such as the European Community, sovereignty and national jurisdiction were matters of serious concern in the countries of the third world, including in the field of human rights. Matters relating to sovereignty and the assessment of national legislation were the concern of national authorities; those powers could only be ceded under specific treaties.

61. The CHAIRMAN pointed out that, in fact, in the context of the monitoring machinery in the field of human rights there had been a gradual evolution to a stage where it was accepted that an opinion could be expressed on whether domestic legality was compatible with international legality.

62. Mr. ALFONSO MARTINEZ said that he could not agree with that view.

63. Mr. SACHAR considered that the action taken by the Special Rapporteur was unsatisfactory because it was unlikely that he would receive a reply. In any case most of the answers were to be found in the media.

64. In his view the Sub-Commission should make a request to the Soviet Union regarding the health of Mr. Gorbachev and asking that he be permitted to speak to the world. The head of a great State was in limbo and the Sub-Commission wanted to know about him.

65. Mr. EIDE said that, since 1948, it had been generally recognized that human rights within a country represented an appropriate concern of the international community. That situation had resulted from the enormous violations of human rights in Europe during the Second World War. The question was how to reconcile concern for human rights with concern for national sovereignty and jurisdiction.

66. A crucial point related to states of emergency. Since 1948 many countries had adopted constitutions which incorporated the Declaration of Human Rights; in fact, however, the principles of the Declaration had not always been applied in practice, particularly in states of emergency. The barriers to human rights represented by states of emergency were however gradually being penetrated. States of emergency were not necessarily evil. In the case of the Soviet Union, however, it seemed that those who had declared the state of emergency had no authority to do so and had not complied with the rules applicable to such states.

67. He appreciated the initiative taken by the Special Rapporteur but it did not solve the problem. The people of the Soviet Union seemed to be clear on the issue; they knew that a coup d'état had taken place and would probably welcome word from the international community. He therefore considered that the Sub-Commission should adopt the suggestion of Mrs. Daes and appoint a

working group to draft a proposal for consideration at the next meeting. The Sub-Commission should not base its action on humanitarian grounds but should concern itself with the facts, as a body of experts.

68. Mr. ALFONSO MARTINEZ said that the action taken by the Special Rapporteur was important. In regard to information, it should be borne in mind that recent events had shown that the international media was capable of gross manipulation of the facts. On what legal grounds could the Sub-Commission conclude that a State had given up its sovereignty in relation to a state of emergency?

69. Mr. CHERNICHENKO shared the concerns of Mr. Alfonso Martinez. It would be useful for the Sub-Commission to have the text of whatever message the Secretary-General had sent to the Soviet Union.

70. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the action taken by the Secretary-General was summarized in a press release (SG/SM/1231) issued on 19 August. He then read out the text of the press release.

71. Mr. ALFONSO MARTINEZ said that the Sub-Commission was accustomed to work on the basis of official documents. Press releases sometimes contained elements which had later to be corrected. He would like to see the text of the Secretary-General's communication.

72. Mr. MARTENSON (Under-Secretary-General for Human Rights) said that the text of the press release would be available to the Sub-Commission at its next meeting.

73. Mrs. WARZAZI considered that the Secretary-General should convey the concerns of the Sub-Commission to the Soviet Union in order to give those concerns greater weight. If no message had been sent by the Secretary-General to the Soviet Union and he had confined himself to making a verbal comment only, she proposed that the Sub-Commission itself should send a message.

The meeting rose at 1.10 p.m.